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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
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 Petition of U S West Communications, Inc. )  
 for a Declaratory Ruling Regarding )  
 Provision of National Directory Assistance )

CC Docket No. 97-172

**OPPOSITION OF MCI WORLDCOM, INC.**

MCI WORLDCOM, INC. (MCI WorldCom) submits the following Opposition to BellSouth's Petition for Limited Reconsideration (the Petition) of the Order in the above-captioned matter, referred to as the *NDA Order*.<sup>1</sup> On October 27, 1999, BellSouth filed this Petition seeking reconsideration of one issue in the *NDA Order* - the interpretation of the clause "information storage facilities of such company" as found in § 271(g)(4)<sup>2</sup>. MCI WorldCom requests that the Federal Communications Commission (Commission) deny this request for limited reconsideration and reaffirm its interpretation of § 271(g)(4) in the *NDA Order* for the reasons described herein.

I. The *NDA Order*

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<sup>1</sup> *Petition of U S West Communications, Inc. for Declaratory Ruling Regarding the Provision of National Directory Assistance*, Memorandum Opinion and Order, CC Docket No. 97-172 (rel. September 27, 1999) (*NDA Order*).

<sup>2</sup> 47 U.S.C. § 271(g)(4).

On June 9, 1999, the Commission adopted its *NDA Order* in which it resolved U S West's Petition for Declaratory Ruling concerning the provision of national directory assistance (NDA). One of the primary issues in the Petition was whether a BOC's provision of national directory assistance violated § 271 of the Act. In its *NDA Order*, the Commission expressly states that § 271(g)(4) "authorizes BOC provision of the capability for customers to access only the BOC's own centralized information storage facilities".<sup>3</sup> Using the express language of the statute, the Commission relied on the words "such company" in § 271(g)(4) as the basis for determining the types of services which may be deemed incidental interLATA services under § 271(g)(4).<sup>4</sup> Based on proper statutory construction, the Commission concluded that "§ 271(g)(4) permits a BOC to offer incidental interLATA services [such as NDA] only when it uses its own facilities."<sup>5</sup> The Commission concluded that this interpretation is consistent with the statutory mandate that provisions in § 271(g) be construed narrowly.<sup>6</sup>

II. The Commission's Statutory Construction of § 271(g)(4) is Supported by the Express Terms of the Statute.

BellSouth argues that the Commission's interpretation that § 271(g)(4) requires a BOC to

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<sup>3</sup> *NDA Order* at ¶ 23. Section 271(g)(4) describes the incidental interLATA exception to the § 271 requirements as an "the interLATA provision by a [BOC] or its affiliate. . . of a service that permits a customer that is located in one LATA to retrieve stored information from, or file information for storage in, information storage facilities of such company that are located in another LATA." § 271(g)(4)

<sup>4</sup> See *NDA Order* at ¶ 23.

<sup>5</sup> *Id.*

<sup>6</sup> 47 U.S.C. § 271(h) states that "the provisions of [271] subsection (g) are intended to be narrowly construed".

own the information storage facilities is “patently erroneous”.<sup>7</sup> BellSouth contends that because § 271(g)(4) makes no reference to the word “own”, the Commission’s conclusion is incorrect and that the phrase “such company” is used only to “identify the entity to whom the information storage facilities must be attributable under § 271(g)(4)”. This, it argues, includes the possibility that the facilities are leased by the BOC.<sup>8</sup> In the alternative, BellSouth offers what it calls a “more common sense reading” of this statutory provision. BellSouth argues that “information storage facilities of such company” refers to the fact that the BOC has incorporated into its costing and pricing structure for NDA the costs of the information storage facilities. We believe that the Commission correctly interpreted the statute and that BellSouth’s interpretation is flawed.

The Commission’s interpretation of this statute relies on the express terms of the language in § 271(g)(4). The phrase “such company” must logically refer to the BOC, and its facilities. BellSouth would have this Commission interpret language in the statutory provision that is simply not there. BellSouth’s argument that “such company” is only meant to identify an attributable interest is flawed for this very reason. There is no mention of “attributable interests” in the statute. Nor does the statute indicate that leased facilities can be deemed of “such company”. As BellSouth points out, if Congress had intended another meaning it could have expressly used those terms.<sup>9</sup> We agree. If Congress intended for either “attributable interest” or “leased” as appropriate here, it would have used those terms. But it did not.

The Commission’s interpretation of “such company” as the facilities owned by the BOC is

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<sup>7</sup> Petition at 4.

<sup>8</sup> Id. at 4-5.

<sup>9</sup> See Id. at 5.

consistent with the requirement of § 271(h) which instructs that the provisions of § 271(g) must be narrowly construed.<sup>10</sup> BellSouth's suggested interpretation, on the other hand, requires broad extrapolation of § 271(g)(4) and runs afoul of the § 271(h) mandate.

III. The Commission Weighed the Proper Competitive Considerations in Its Interpretation of § 271(g)(4).

BellSouth contends that the Commission did not properly consider the requirements in § 271(h) to ensure that competition will not be adversely affected by the Commission's interpretation of § 271(g)(4).<sup>11</sup> BellSouth states that the Commission's interpretation of § 271(g)(4) places the requirement of ownership only on the BOCs and not other competitors.<sup>12</sup> It also argues that ownership requires a substantial initial investment for the facilities and equipment—one which other providers of NDA do not need to incur because they are allowed to share costs with other competitors. BellSouth claims that this ownership obligation will result in higher prices to BellSouth's customers.<sup>13</sup>

BellSouth intentionally misreads § 271(h).<sup>14</sup> Section 271 refers to a BOC's ability to

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<sup>10</sup> Strict construction of § 271(g) is also necessary to maximize the incentive that § 271(a) creates for the BOCs to open their local markets to competition. The more interLATA services a BOC can provide by satisfying the exceptions to § 271, the less incentive there is to comply with the § 271 requirements.

<sup>11</sup> Petition at 6.

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> The relevant part of this provision states that “[t]he Commission shall ensure that the provision of services authorized under subsection (g) by a Bell operating company or its affiliate will not adversely affect telephone exchange service ratepayers or competition in any telecommunications market”. § 271(h).

provide in-region, interLATA services and includes limited exceptions to the basic prohibition for the provision of incidental interLATA services. In accordance with the statute, the Commission must consider whether the BOC's incidental services will adversely affect competition and consumers. BellSouth attempts to shift the focus of the analysis. The requirement in § 271(h) requires the Commission to consider whether the **BOC provision** of interLATA services under subsection (g) will adversely affect the competitive market or consumers. It does not, as BellSouth suggests, require this Commission to determine whether the BOCs must incur different costs than competitors to provide the same services or to ensure that the BOCs have a level-playing field as they roll out the subject service.

Indeed, the broader interpretation of § 271(g)(4) proposed by BellSouth would also violate § 271(h) because allowing BOCs to provide a broader range of in-region interLATA services would “adversely affect . . . competition” in the local telecommunications market by reducing their incentives to obtain § 271 authority. Moreover, as the Commission recognized in the *NDA Order*, provision of in-region NDA creates a risk of discrimination arising out of the BOCs' current monopoly over local telecommunications services, which include listing information, and that § 271 was intended to take away the BOCs' incentives to engage in all forms of such discrimination.<sup>15</sup> Expanding the circumstances in which a BOC can provide in-region NDA expands its incentives to engage in discrimination and puts additional enforcement burdens on state and federal regulators.

Conversely, other companies can and do compete to provide NDA, so entry by the BOCs is not necessary to ensure that NDA services will be provided on a competitive basis. A significant

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<sup>15</sup> See *NDA Order* at ¶ 55.

barrier to entry results from the BOCs' failure to comply with their nondiscrimination obligations, and allowing the BOCs' to provide in-region NDA on a more extensive basis increases their incentives to discriminate. The maximum investment of \$8 million that BellSouth states is required is not that substantial.<sup>16</sup>

Moreover, BellSouth's argument regarding its increased investment required to provide NDA ignores the investment required by competitors to provide this same service. The investment for competitors is increased because competitors do not have access to the same listing data (including independent LEC and CLEC information) that is within the exclusive control of the ILECs. Competitors must incur significant costs to either recreate the same listing information, which the BOCs are legally obligated to provide (and yet some still refuse to do so) or spend substantial time and resources to litigate and enforce their right to obtain the listing information. Many of these battles continue. In the end, for the competing providers of NDA, these costs could potentially result in higher prices to consumers. Therefore, BellSouth's argument that the Commission has interpreted § 271(g)(4) incorrectly because of a negative competitive impact on and increased costs for the BOCs is disingenuous.

#### IV. Anything Less Than Full Ownership Is Contrary to the Statute and Anticompetitive.

BellSouth claims that other alternatives should be considered to outright ownership of the

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<sup>16</sup> Petition at 8. BellSouth argues that it would be wasteful for each BOC to build and operate its own database. In other contexts, however, the BOCs argue that new local entrants should be encouraged to construct their own facilities. If BellSouth contends that too few NDA providers have built databases to generate effective facilities-based competition, then the Commission should interpret 271(g)(4) to encourage more independent facilities rather than shared facilities.

information storage facility, including sharing these facilities.<sup>17</sup> BellSouth envisions a shared arrangement where each company contributes capital to own a percentage of the facility, contributes to the on-going maintenance of the facility, and the parties would all comply with the Commission's nondiscrimination requirements regarding the provision of listing information to unaffiliated providers.<sup>18</sup> BellSouth suggests this would have a potential benefit of easing market entry for new competitors that could also share in the NDA facilities.<sup>19</sup>

Pursuant to the Commission's findings in the *NDA Order*, a shared arrangement cannot be justified. The Commission clearly stated that it "cannot reasonably interpret § 271(g)(4) as extending to BOC provision of the capability for customers to access a database that is not the BOC's own information storage facility."<sup>20</sup> We believe the Commission got this right. Additionally, such a shared arrangement could mean that all of the directory listing information for all of the BOCs would be in one common place. The BOCs would not have to negotiate and reach agreements with other BOCs to get their directory listing information, like the competitors must do. Moreover, there is no requirement that other competitors be offered any ownership opportunity. Consequently, the shared storage facility proposal raises even more concerns under a § 271(h) analysis with respect to whether BOC services authorized under § 271(g) will have an adverse affect on competition. The fact that certain BOCs refuse to give competitors access to their directory listing information would only make a competitor's ability to compete worse. The

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<sup>17</sup> Petition at 7.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *NDA Order* at ¶ 24.

possibility of discriminatory treatment and coordinated anti-competitive behavior among the BOCs could mean that the BOCs' NDA products would be more accurate and less expensive than competitors' products. With all of the information in one place and controlled by the BOCs, there would even be less incentive to comply with the Commission's requirements to provide nondiscriminatory access to the listing information to unaffiliated providers of directory assistance.

Finally, BellSouth argues that the Commission should recognize that something less than total ownership can satisfy the requirements under § 271(g)(4).<sup>21</sup> BellSouth suggests that the Commission consider a 10% interest as satisfactory since that is an interest sufficient to establish an entity as an affiliate of another company pursuant to the definition of "affiliate" in the Act.<sup>22</sup> We believe that if Congress intended for a 10% interest to be sufficient, it would have said so. Moreover, if a BOC owns less than 100% of the facility in which directory assistance listing information is stored, it could seek to shift responsibility for any failure to comply with the obligation imposed by the *NDA Order* to provide unaffiliated providers with nondiscriminatory access to listing information.<sup>23</sup> The nondiscrimination obligation lies with the BOC, not a third party and the BOCs should not be allowed to circumvent this obligation through some ruse.<sup>24</sup> A

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<sup>21</sup> Petition at 8. As a practical matter, allowing a BOC to provide in-region, interLATA connections to facilities in which it has a limited interest would substantially expand the scope of the exceptions in § 271(g), contrary to the policy of § 271 and the express strictures of § 271(h).

<sup>22</sup> Petition at 8, n. 16 (citing 47 U.S.C. §153 (1) which defines affiliate "... the term 'own' means to own an equity interest (or equivalent thereof) of more than 10 percent.").

<sup>23</sup> See *NDA Order* at ¶ 37.

<sup>24</sup> For this reason, MCI WorldCom believes the Commission should require the BOCs to certify to the Commission that they have a 100% ownership interest of the information storage

requirement of 100% ownership of the storage facility is supported by the statutory language and deters the type of anticompetitive behavior that would potentially make competitors' NDA services less attractive to consumers.

V. Conclusion

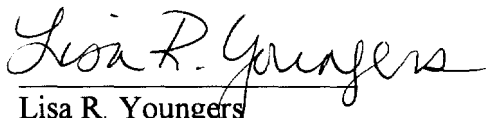
BellSouth's petition for limited reconsideration of the *NDA Order* should be denied. The Commission's interpretation of the subject phrase is supported by the express language of the statute and guided by statutory construction principles. BellSouth's interpretations should be rejected as unsupported expansions of the existing language in § 271(g)(4). The Commission's interpretation is also supported by the proper competitive considerations as required in § 271(h). Anything less than a 100% ownership requirement for the storage facilities should be rejected by this Commission as unsupported by the statute. Moreover, such a relaxation in the requirement would foster anticompetitive activity in the NDA market and allow for a circumvention of the BOCs' nondiscrimination obligations. Finally, the Commission should state that total and exclusive ownership of the storage facilities by the BOCs is required to satisfy § 271(g)(4). The

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facilities before they can provide in-region NDA service in order to satisfy § 271(g)(4).

Commission should also require the BOCs to certify to the Commission that it has 100% ownership of the information storage facilities prior to providing its NDA services and in order to satisfy § 271(g)(4).

Respectfully submitted,  
MCI WORLDCOM, INC.

By:   
Lisa R. Youngers  
Lisa B. Smith  
1801 Pennsylvania Avenue N.W.  
Washington D.C. 20006  
(202) 887-2828

Its Attorneys

Dated: December 1, 1999

## CERTIFICATE OF SERVICE

I, Lonzena Rogers, do hereby certify, that on this first day of December, 1999, I caused by first class United States Postage, a true and correct copy of MCI WorldCom, Inc.'s Opposition to BellSouth's Petition for Limited Reconsideration to be served on the following:

Magalie Roman Salas \*  
Secretary  
Federal Communications Commission  
TW-B204  
445 Twelfth Street, SW  
Washington, DC 20554

Mr. Robert Sutherland  
A. Kirven Gilbert, III  
Attorneys for BellSouth Corporation  
Suite 1700  
1155 Peachtree Street, NE  
Atlanta, GA 30309-3610

John M. Goodman  
Attorney for Bell Atlantic  
1300 I Street, NW  
Washington, DC 20005

Frank Michael Panek  
Ameritech  
200 West Ameritech Center Drive  
Hoffman Estates, IL 60196-1025

Mark C. Rosenblum  
Ava B. Kleinman  
James H. Bolin, Jr.  
AT&T Corporation  
Room 3252J1  
295 North Maple Avenue  
Basking Ridge, NJ 07920

Robert M. Lynch  
Durward D. Dupre  
Mary W. Marks  
Marjorie Morris Weisman  
Attorneys for Southwestern Bell Telephone  
Co.; Pacific Bell; Nevada Bell  
One Bell Center, Room 3520  
St. Louis, MO 63101

George Petrutsas  
Paul J. Feldman  
Fletcher, Heald & Hildreth, P.L.C.  
1300 North Seventeenth Street  
Eleventh Floor  
Rosslyn, VA 22209

Nancy C. Woolf  
Jefferey B. Thomas  
Robert A. Shives  
Attorneys for Southwestern Bell Telephone  
Co.; Pacific Bell; Nevada Bell  
140 New Montgomery Street  
Room 1529  
San Francisco, CA 94583

Robert B. McKenna  
US WEST, Inc.  
1801 California Street  
Suite 5100  
Denver, CO 80202

Christine Jines  
SBC Telecommunications, Inc.  
1401 I Street, NW  
Suite 1100  
Washington, DC 20005

Leon Kestenbaum  
Vice President and General Counsel  
Sprint Communications Company, L.P.  
1850 M Street, NW  
Washington, DC 20036

Sue D. Blumenfeld  
Jay Angelo  
Willkie Farr & Gallagher  
Attorneys for Sprint Communications Co, L.P.  
Three Lafayette Centre  
1155 Twenty-First Street, NW  
Washington, DC 20036

ITS, Inc. \*  
1231 Twentieth Street, NW  
Washington, DC 20036

  
Lonzeana Rogers

\*Denotes Hand Delivery